NEWS NOTES

OF THE CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS

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NEW DRAFT CALL ISSED

END OF THE ROAD?

Supreme Court Refuses to Hear Non-Registrant Appeals

Just before it adjourned for the summer, the United States Supreme Court refused to review the first two of the several non-registrant cases which have been brought before it. By its action, the court affirms the convictions of the five men involved, and while an application for re-hearing is being considered and one other case is still pending, little hope remains for a favorable outcome. Four of the five are Quakers.

The first case decided involved four Indiana C.O.'s who had been convicted by Federal Court juries in Indianapolis last Spring and whose appeal had been denied by the United States Court of Appeals in Chicago. Of the four, Francis Henderson, William Wildman, Charles Frantz and Richard Shufflebarger, only Henderson had served his 90 day prison term; the others had been free on bond pending appeal.

Turned down a week later was Robert Wixom, University of Illinois graduate student. Wixom served in Civilian Public Service during the war, including two years as a guinea pig in malaria experiments. He started serving his year-and-a-day jail term on June 26.

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Effect of Renewal on C.O.'s Still Uncertain

With a first "token" draft call for 20,000 already issued and every prospect that more inductions will follow, the Korean war has put Selective Service back into operation after an 18-month lull. Last previous inductions were in January, 1949.

Until the Korean crisis, the question of Selective Service renewal was caught in a tangled political web which for a time made it appear that the law would lapse. It appeared that the final version of renewal legislation would bar inductions except with the authorization of Congress, and would limit Selective Service expenditures to a minimum.

Outbreak of war, however, swept aside all restraints, and the new law gave the President added powers of calling up Reserves and National Guardsmen without their consent. The bill swept through the House with only four dissenting votes, and was passed unanimously by the Senate.

Reporting to the House on the joint conference which agreed upon renewal, Rep. Dewey Short said it was the hope of the legislators that the President, if he planned to bring the forces up to strength, would

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Appeal Court Urges Relief for Non-Registrants

The Justice Department should take "executive action. . . .with a view of relieving young conscientious zealots from the overwhelming burden of carrying the felon's brand," three judges of the United States Court of Appeals in San Francisco declared on April 19 in deciding the case of Robert Cannon, Los Angeles non-registrant.

The opinion by Circuit Judge Albert L. Stephens, with Chief Judge William Denman and Circuit Judge William E. Orr concurring, ruled against Cannon on points of law, but then added:

"There is room here, however, for executive action. The members of this panel of this court are of the opinion that the Justice Department of the national government should carefully re-examine this case and all others of like nature with a view of relieving young conscientious zealots from the overwhelming burden of carrying the felon's brand past the period of rash decision and throughout their lifetime."

As these words are directed at the Justice Department rather than the President, they presumably mean that prosecutions against non-registrants such as Cannon should be stopped. Implied in the opinion, however, is a request that the President grant an

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Ray Newton, Chairman Caleb Foote, Executive Secretary

C.O.'s PRESENT STATUS UNDER DRAFT RENEWAL

Although it is still too soon to have answers to many questions now being asked by C.O.'s subject to the draft law, certain facts are already clear:

(1) C.O.'s willing to engage in non-combatant service in the Army who are already classified 1-AO will be subject to induction along with 1-A's, and will presumably be called up in order of age, beginning with the oldest. They will be assigned to non-combatant units such as the Medical Corps.

(2) C.O.'s who will accept neither combatant nor non-combatant army service and who have been classified IV-E will continue to be deferred. As this deferment is enacted in the law, it can be changed only by Congress. It is impossible to say whether such a change is likely. If many men are drafted in the next six months, it is quite probable that it will be noted that C.O.'s have no service obligations under the law, and pressure may result leading to the imposition of some form of "alternative service."

C.O.'s who have not yet been classified, or who are appealing for IV-E classifications, will doubtless find that in the crisis atmosphere now prevailing, they will have more difficulty persuading local boards of their sincerity. All men seeking IV-E should be very careful to observe all time limits, and, in particular, to appeal an unfavorable classification well within the ten-day limit allowed. C.O.'s who are not given IV-E should appeal any classification except V-A (over age) or IV-F (physically unfit), even if they are deferred in some other category. Selective Service Regulations provide that in the event the desired classification is denied, a written request for a hearing before the local board should be made within ten days. Following the hearing, the registrant will be classified again and sent a new notice. If this classification is still not that which is desired, a written appeal must be entered within ten days. Such an appeal consists in writing a short letter to the board, stating that "I hereby appeal..." and naming the classification which is requested.

Problems for non-registrants

Two groups of men, those who either will not accept or are not eligible for IV-E classification, may face serious difficulties if use of the draft continues. Almost all prosecutions against non-registrants have lapsed in recent months. Will these now be taken up? Many non-registrants who have served prison terms and were registered by the prison on their release were classified 1-A, and may be given induction orders. The only threatened second prosecution so far has been that against Amos Brokaw, which to date has not materialized. However, second prosecutions will be more likely if men are being drafted and the Korean war continues.

Agnostics, Humanists, etc.

Only men whose conscientious objection is the result of "religious training and belief" are eligible for C.O. classification, and religion is defined as belief in a "Supreme Being". The meaning of "Supreme Being" has not been tested in the Courts, but a number of C.O.'s have stated that they do not believe in one, or have qualified their answer. The law specifically excludes conscientious objection resulting from "political, sociological or philosophical views or a merely personal moral code." Any C.O.'s faced with problems arising from this discriminatory restriction or from the "Supreme Being" requirement are urged to contact CCCO immediately.

In any contacts with Selective Service or other government agencies, C.O.'s should keep copies of all correspondence. When writing to CCCO for advice, please give your date of birth and details about your beliefs and specific problems. The following CCCO publications will be helpful:

Conscientious Objectors Under Selective Service—a brief guide for men seeking C.O. status. (10¢)

Prison and Court Manual for C.O.'s, guide for men facing possible prosecution. (25¢)

A Selected Bibliography—referring to works in all fields of conscientious objection. (15¢)

New Draft Call

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first call up the Reserves and National Guard, using the induction of young men only as a final expedient. This request has obviously been ignored.

The crisis brought a flood of "delinquents" to draft boards, including many men who had never registered. It had been known that compliance with the unused draft had been very spotty, and in Philadelphia, U. S. Atty. Edward A. Kallick had warned earlier in the summer that thousands of men were not registering at all. "Something must be done if the act is not to be completely ignored," Kallick had said. These "delinquents" may have a harder time establishing claims for deferment, and C.O.'s who have failed to comply with the requirements of the act may find it will prejudice boards against finding them sincere objectors.

When the law was renewed the armed services were approximately 600,000 below "authorized strength," but under present conditions many more men than that may face the draft. Likewise, a rapid expansion of the Selective Service System is certain; at the time of renewal it consisted of 3,659 local boards, with 1,340 full time and 2,100 part time employees.

COHNSTAEDT WINS IN HIGH COURT

Supreme Court Admits C.O. to Citizenship

The prolonged struggle of Martin Cohnstaedt to become an American citizen came to a successful conclusion last month when he was sworn in as a citizen before Judge Roy K. McMullen of Barton County, Kansas.

Two years ago Judge McMullen turned Cohnstaedt down because of the German-born Quaker's conscientious objection to war. Because of its importance as a test of the legal rights of C.O.'s the case was carried on appeal with the financial assistance of the CCCO and the American Friends Service Committee. The Kansas Supreme Court sustained the local judge, but this Spring the U. S. Supreme Court, by a 5-3 vote, ruled in Cohnstaedt's favor and ordered that he be admitted to citizenship.

The decision clarifies the citizenship rights of alien C.O.'s, and completes the reversal of earlier Supreme Court decisions against C.O.'s. In a series of cases before World War II (Schwimmer, Macintosh and Bland), the Court had held that the oath required of all applicants for citizenship, that they "support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic" implied a willingness to take up arms. There were vigorous dissents in these cases by Justices Hughes and Holmes, and in 1946, in another 5-3 decision, the court admitted a Seventh-Day Adventist to citizenship (U. S. v. Girouard). "We conclude," said Justice Douglas for the majority, "that the Schwimmer, Macintosh and Bland cases do not state the correct rule of law." This seemed clear enough, but because Girouard was opposed only to combatant, and would have accepted non-combatant military service, and because the court's decision laid great stress on the fact that each non-combatant "is making the utmost contribution (to the war effort) according to his capacity," many pacifists continued to have difficulties. The Cohnstaedt decision should finally end these difficulties, and it will also strengthen the position of pacifists who are already citizens but engage in activities in which the oath of allegiance to "support and defend the Constitution" is required. It is now clear that the courts do not regard this oath as in any way implying a willingness to take up arms.

Martin Cohnstaedt entered the United States in 1937, his family having left Germany several years earlier. While studying at Rutgers University, he joined the Plainfield, N. J., Monthly Meeting of Friends, and later married a North Carolina Quaker. During World War II he was classified IV-E as a conscientious objector, but was never ordered to CPS.

In his hearing before Immigration and Naturalization Service Examiner Michael McCaul, Cohnstaedt said that he did not believe armed forces were necessary in a Christian nation, and that he would be willing to have repealed all laws providing for raising such forces.

"Is it your position," asked Examiner McCaul, "that you cannot contribute in any way to armed forces for the purpose of rendering this country victorious in armed conflict for any cause whatever?"

"That is correct to this extent. I do not believe in this country engaging in armed conflict for any reason, and I cannot contribute anything to be used solely and directly in furtherance of armed conflict."

"Are you willing to work in a munitions factory in time of war?" Cohnstaedt was asked. He replied in the negative, and also said he would refuse to deliver ammunition to front-line troops. The questioning also brought out that Cohnstaedt would remove wounded from the battlefields as a civilian but not as a member of the armed forces, and would refuse to be a chaplain "because chaplains are members of the armed services."

In argument before the Supreme Court, Chief Justice Vinson indicated his hostility to Cohnstaedt's viewpoint, and he and Justices Reed and Clark voted against the court's decision. Justice Black, on the other hand, asked the attorney for the government whether it would not be true that under the government's contention Gandhi would have been denied citizenship had he asked for it. Black also said that he had known many Quakers, that they had "curious quirks," but that he had always found them to be excellent citizens and attached to the principles of the Constitution.

Cohnstaedt was represented in the Kansas courts by Laurence Holmes of Wichita. By arrangement with the American Civil Liberties Union, Osmond K. Fraenkel of New York handled the case before the U. S. Supreme Court.

End of the Road?

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Still pending before the Supreme Court is a petition for certiorari in the Los Angeles cases of Robert Richter and Robert Cannon, who a year ago were sentenced to a three year term each. Their appeals were rejected by the San Francisco Court of Appeals, which, in the Cannon case, asked for relief for conscientious objectors through executive action by the Department of Justice.

BACK COPIES

Our supply of two issues of NEWS NOTES has been completely exhausted, and in order to supply requests for complete files, it will be appreciated if readers possessing the following issues will return them to us if they have no further use for them:

Vol. 1, No. 1 – January 1949
Vol. 1, No. 4 – June 1949

These should be mailed direct to the CCCO.

Appeal Court

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amnesty pardoning these men. Only a Presidential pardon can lift "the overwhelming burden of the felon's brand" once a man has been convicted and his appeal lost.

Cannon had contended that the Selective Service requirement for registration deprived him of the free exercise of religion guaranteed by the First Amendment. During his trial it had been agreed that Cannon's reasons for failing to register were "because of religious beliefs and convictions." His attorney, James D. Randles, maintained that he was therefore protected by the First Amendment, and argued that the trial judge, William C. Mathes, should instruct the jury to find Cannon not guilty if he had acted from religious motivation.

Judge Mathes agreed that Cannon "is entirely honest and conscientious and absolutely sincere" and that "he is not a criminal at all." But he refused to submit the question of Cannon's religious sincerity to the jury, holding that Congress had the power to require registration of all persons whether or not religious convictions were thereby violated. In this he was sustained by the Appeal Court, which found Cannon's arguments "entirely without merit in law." This case, combined with Robert Richter's, is now being appealed to the Supreme Court. (See story on appeals elsewhere in this issue.)

One curious thing about the Cannon and Richter cases, both of which were tried before Judge Mathes, was the fact that 3-year-prison sentences were imposed, and will have to be served unless the Supreme Court unexpectedly overrules the lower courts. Judge Mathes was apparently impressed by their sincerity, and declared that "I have never had any cases that caused me more trouble than these cases have caused me of heart and mind." Why, then, did he impose 3-year prison terms, a more severe penalty than that imposed by any court other than the Los Angeles one? He apparently felt he could not impose probation unless Cannon would recant, say he was sorry, and ask for another chance. As we have frequently pointed out in this publication, this attitude (taken by many judges) is an unnecessarily narrow interpretation of the Probation law, which gives a judge almost unlimited discretion to use probation whenever "the ends of justice and the best interests of the public as well as the defendant will be subserved thereby." Even if you accept the Judge's feeling about probation, however, it still remains to be explained why, instead of imposing a sentence like the 90 day term imposed on the Indiana non-registrants last summer, he "threw the book" at defendants whose sincerity so impressed him. It is worth repeating that three years is a more severe sentence than the average imposed by Federal courts upon postal law, narcotics law or white slave law violators.

PARDON AND AMNESTY

A Baltimore conscientious objector who served a term in the Federal Reformatory at Chillicothe, Ohio, during the war, has received "a full and unconditional pardon" from President Truman. The action was taken approximately one year after his application was filed. Other ex-prison C.O.'s whose names are not among the 1,523 who were pardoned in 1947 can get information and application forms from the Pardon Attorney, Department of Justice, Washington, D.C., or from U.S. Probation offices.

But scattered individual pardons are no substitute for a general amnesty. Among groups already on record in favor of amnesty are the A.F. of L., the C.I.O., the Presbyterian Church in the U.S.A., the American Baptist Convention, and the Federal Council of Churches. Readers are urged to get church, labor, summer conferences and other groups to take similar action. Copies of such resolutions should be released to the press and mailed to the CCCO. A flier, "Amnesty for Conscientious Objectors," is available from the CCCO; single copies free, $1 per 100.

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